Court of Singapore would be bound to follow *Mills* case if the point came up for consideration during the period when Singapore was part of Malaysia. Consequently, by virtue of section 13 of the Republic of Singapore Independence Act 1965, this court is bound by the decision in *Mills* case.

We would add that it is comforting that this result, namely that we are, by the doctrine of *stare decisis*, bound by the decision in *Mills* case, is arrived at solely on what we consider to be the proper interpretation of the provisions of section 88(3) of the Malaysia Act and section 13 of the Republic of Singapore Independence Act 1965, because it accords with the decision of the full bench of the High Court of Singapore in *Woo Sing* v. *Regina, supra*, and with our own views on the important question of law raised in this appeal. We do not consider it necessary to state the reasons why we would have arrived at the same result as the full court did in *Woo Sing* v. *Regina, supra*, and the Court of Appeal of Sarawak, North Borneo and Brunei did in *Mills* case. It is sufficient for us to say that we fully concur with the reasons given in the judgment of Buhagiar J. in *Anthonysamy* v. *Public Prosecutor*[9] in which the learned judge sets out his reasons for agreeing with the decision in *Woo Sing* v. *Regina, supra*.

Appeal allowed.

Solicitors: *Chor Pee & Hin Hiong.*

APPENDIX

PUBLIC PROSECUTOR v. P.G. MILLS

[C.A. (Williams C.J., Bodley J. and Bladgen Ag. J.) September 24, 1955]

[Kuching — Court of Appeal of Sarawak, North Borneo and Brunei, Criminal Appeal No. 3 of 1955]

Penal Code s. 304A — Nature and degree of negligence — Standard of proof.

The nature and degree of negligence in an act causing death required to support a conviction under section 304A of the Penal Code is the same as that in any other act carried out so harshly or negligently as to endanger human life or the safety of others where that act was the immediate cause of death and not the remote cause. The standard of proof of an offence under section 304A is the same as that required in any criminal offence in England.

COURT OF APPEAL.

Williams C.J. (President): This case comes before the Court of Appeal on the certificate of the Attorney-General pursuant to section 13 of the Courts Ordinance, 1951. The respondent, Peter Gilbert Mills, was charged before the High Court of Brunei in the following terms: —

"That you Peter Gilbert Mills of Messrs. British Malayan Petroleum Company Limited, Jerudong, State of Brunei, at or about 2.30 p.m. on the 13th day of May, 1955, at or close to Mile 2 on the main Brunei-Tutong Road in the State of Brunei caused the death of one Latip bin Awang Ladi by the negligent driving of a motor vehicle not amounting to culpable homicide and thereby committed an offence punishable under section 304A (1) of the Penal Code."

The trial took place before Rogers J. and two assessors and in the course of his summing up the learned trial judge said: —

"The prosecution have charged this man under section 304A (1) with causing the death of Latip by the rash driving of a motor vehicle.

In order to succeed, the standard of proof required is exactly the same and no less than the standard of proof required in a manslaughter case in England. What is usually known as manslaughter is what we are considering here. In order to satisfy the court that the man who caused the death of another man is guilty of manslaughter the prosecution have to prove a very high degree of negligence indeed. This is what has been laid down in England:

'In explaining to juries the test they should apply to determine whether the negligence in the particular case amounted or did not amount to a crime judges have used many epithets such as "culpable", "criminal", "gross", "wicked", "clear", "complete". But whatever an epithet be used and whether an epithet be used or not, in order to establish criminal liability, the facts must be such that, in the opinion of the jury, the negligence of the prisoner went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment: *R.* v. *Bateman* (19 Cr. App. R. 8)'."

Later in his summing up the learned trial judge directed the assessors that if they were not satisfied the prosecution had proved their case under section 304A (1) of the Penal Code, they might still convict him of rash or negligent driving under section 279 of the Penal Code. He said: "If you are not satisfied you must find him not guilty of the more serious charge, but if you do that it is open for you to convict him of a lesser charge, namely that of rash or negligent driving under section 279 of the Penal Code. This section reads as follows: —

'Whoever drives any vehicle, or rides, on any public way, in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred dollars, or with both'."

He went on to say: "If you think that he drove dangerously that afternoon you can say he is guilty of dangerous driving and not manslaughter, the degree of negligence necessary in the latter case being much higher than that in the case of dangerous driving"

The Public Prosecutor challenges these directions and by his certificate dated 15th July, 1955, asks the Court of Appeal to determine "the nature and degree of negligence in an act causing death required to support a conviction under section 304A aforesaid and the proper direction to give to the assessors in a case similar to that before the learned judge."

The learned trial judge's ruling that the standard of negligence required to sustain a conviction under section 304A (1) must be equivalent to that high standard required to sustain a conviction for manslaughter can only be supported if the offence of killing by a rash or negligent act under section 304A (1) can be accounted equivalent to the English crime of manslaughter. Manslaughter under English law is defined as

"the unlawful and felonious killing of another without any malice either express or implied, and is of two kinds — voluntary and involuntary. Voluntary manslaughter is killing upon sudden provocation or in the course of a sudden quarrel.

Involuntary manslaughter is causing death by accident in doing an unlawful act not amounting to a felony or causing death by culpable neglect, that is doing a lawful act but in an unlawful manner." [See *Archbold's* Criminal Pleading, Evidence and Practice, Edition XXXIII, pages 923, 924].

Careful comparison of this definition with the crimes of murder, culpable homicide not amounting to murder, and killing by a rash or negligent act (sections 299-304A of the Penal Code) shows that what would be charged as manslaughter under English law, is under the Penal Code spread over sections 299, 300 and 304A. It is apparent therefore that section 304A at best only embraces a small proportion of what might be called manslaughter cases — only that proportion in fact which would be designated as involuntary manslaughter or manslaughter by negligence under English law, and not necessarily all of that.

The next marked difference to note is that manslaughter whether it be voluntary or involuntary is a felony punishable with imprisonment for life whereas killing by a rash or negligent act under section 304A has always been punishable with no more than two years' rigorous imprisonment or with a fine or with both until the 23rd of May, 1953, when section 7 of the Criminal Procedure Code (Amendment) Ordinance 1953 came into effect and raised the maximum penalty for causing death by rash or negligent act to five years' rigorous imprisonment or fine where the act in question was the driving of a vehicle or the use of firearms or explosives [section 304A (1)]. Speaking of manslaughter by negligence, that is involuntary manslaughter, Lord Hewart L.C.J. said in *R.* v. *Bateman* 19 Cr. App. R. p. 8 at p. 16: "It is, nevertheless, most desirable that in trials for manslaughter by negligence it should be impressed on the jury that the issue they have to try is not negligence or no negligence, but felony or no felony." I do not see how homicide under section 304A with its comparatively limited scale of punishment can be said to be the equivalent of a felony. It is more logical to equate the standard of negligence required in section 304A cases with that in offences of rashness and negligence carrying punishments of comparable severity: for instance, section 336 (rash or negligent act endangering safety), 279 (rash or negligent driving), 337 (causing hurt by rash or negligent act) and 338 (causing grievous hurt by rash or negligent act) which, together with fines of varying severity, carry maximum sentences of three months, six months, six months and two years' rigorous imprisonment respectively. Equivalents under English law are reckless or dangerous driving which is punishable under section 11 of the Road Traffic Act, 1930 (as amended by section 4 of the Road Traffic Act, 1934) with two years' imprisonment and fine; and causing bodily harm by furious driving which is punishable by section 35 of the Offences Against the Person Act, 1861, with two years' imprisonment.

Notwithstanding the opinion of *Ratanlal* in "Law of Crimes" and the decision of *Cheow Keok* v. *Public Prosecutor* [1940] M.L.J. 103 which was not followed in *Woo Sing & Anor.* v. *R.* [1954] M.L.J. 200 I am of the opinion that the standard of negligence required for a conviction under section 304A (1) cannot be equated with that required for a conviction for manslaughter and that although the two crimes may and indeed do overlap they are essentially different. The main feature of the offence under section 304A (1) is the causing of death by doing an act which was rash or negligent but which was neither designed nor voluntary. The opinion expressed by the Full Court of Singapore in *Woo Sing & Anor.* v. *R., supra,* is, I consider, sound: it is to the effect that the Penal Code is not a codification of English law and it is dangerous, particularly in homicide cases, to try and introduce English case law into the consideration of the Code. English cases stress the grossness of the negligence necessary to constitute manslaughter but I am not prepared to hold that the acts of rashness or negligence which cause death must be of that very high degree before an offence under section 304A (1) can be committed.

Mr. Young for the State has suggested that the standard of negligence required to sustain a conviction under section 304A (1) is no more and no less than that required for a conviction under section 279 of the Penal Code or section 27 of the Road Traffic Ordinance. Commenting on section 336 *Sir H. S. Gour* says in "The Penal Law of India" Ed. IV, Vol. II, page 1761, paragraph 3610: —

"The Code recognizes four degrees of criminality in criminal rashness or negligence irrespective of its being a public nuisance; (i) when it endangers human life or limb without causing hurt, in which case the offence is punishable under this section; (ii) when the same act causes hurt, when it is punishable as provided in the next section; (iii) when it causes grievous hurt, when it is punishable as provided in section 338; and (iv) when it causes death, when it is punishable as provided in section 304A. In all these four offences the essential ingredients of rashness or negligence are common, but the enormity of the crime varies with the effects produced."

From the similarity of the words used to describe the degree of rashness and negligence in these sections I am prepared to hold that the degree of rashness or negligence in these sections is the same throughout "for it is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act" — *Courtauld* v. *Legh* (1869) L.R. 4 Ex. 126 *per* Cleasby B. at page 130. The results of the rashness or negligence, however, differ. But I am not prepared to equate the standard of rashness and negligence in these Penal Code sections with that in section 27 or any other sections of the Road Traffic Ordinance, 1953 (No. 29 of 1953) which has its own provisions regulating the degree of care to be taken in driving motor vehicles and has no direct reference to causing death by rashness or negligence.

In my view and in answer to the Public Prosecutor's certificate the nature and degree of negligence in an act causing death required to support a conviction under section 304A (1) is the same as that in any other act carried out so rashly or negligently as to endanger human life or the safety of others where that act was the immediate cause of death and not the remote cause. It is not possible to assess degrees of negligence and rashness with any precision as we have no precise standard whereby we can measure either negligence or rashness.

For the same reasons that it is not possible to assess degrees of negligence and rashness with pre-

cision it is not possible or desirable to lay down any hard and fast direction to be made to assessors. This court has been asked, however, to determine the proper direction to be given and without attempting to lay down any rigid rule I would say that assessors should be directed that they should convict under section 304A (1) only if they are satisfied: —

(1) That the death caused was directly attributable to accused's act i.e. that the "rash or negligent" act was the immediate cause of death and not merely a remote cause of it;

(2) That accused's act was rash or negligent to such a degree as to endanger human life or the safety of others.

In this Colony the English law of evidence is followed and, therefore, the standard of proof of an offence under section 304A is the same as that required in any criminal offence in England. It is in this sense that the assessors must be "satisfied" in the terms of the direction I have given. Before a person is found guilty the evidence must be such as to satisfy the court of his guilt: if left in doubt in this regard the court must acquit.

Blagden Ag.J. concurred.

Bodley J.: In this case the direction of this court is sought on the question of what constitutes the proof necessary for a conviction of an offence contrary to section 304A of the Penal Code, which section reads as follows: —

"(1) Whoever causes the death of any person by the rash or negligent driving of a motor vehicle or the rash or negligent use of firearms or explosives not amounting in either case to culpable homicide shall be punished with imprisonment of either description for a term which may extend to five years or with fine or with both."

The important words would seem to be "any rash or negligent driving not amounting to culpable homicide."

In the case of *Cheow Keok* v. *Public Prosecutor* [1940] M.L.J. 103 it was held by the F.M.S. Court of Appeal that the test to be applied was that which was laid down in *Rex* v. *Bateman* 19 Cr. App. R. p. 8.

In 1954 the Full Court in Singapore in the case of *Woo Sing* v. *R.* [1954] M.L.J. 200, held that this test should not be applied. It would therefore appear that there are two conflicting decisions based on the same section as 304A in this Colony. This court must accordingly decide whether the *Bateman* test should be applied here or not, and, if not, what the test should be. It seems to me that section 304A represents the Indian draftsman's attempt to create the statutory offence of manslaughter by negligence: *Ratanlal's* Law of Crimes 18th Edn. p. 774. *Gour's* Indian Penal Code 4th Edn. Vol. 2 p. 1613.

The section is in the nature of an after-thought and was inserted at a later period than were its immediate predecessors.

Sections 299 and 300 of the Penal Code create the offence of culpable homicide and enact that the said offence of culpable homicide is murder. This is subject to various exceptions, the effect of any of which would be to reduce the offence to culpable homicide not amounting to murder, or what might accurately be described as voluntary manslaughter. But the common law offence of manslaughter in England takes two forms, voluntary and involuntary, and it is clear that without the insertion of section 304A, the offence of involuntary manslaughter or manslaughter by negligence is entirely lacking.

Process of time revealed that legislation creating the offence was desirable and in my opinion section 304A was the result.

Be it noted that the act has to be one not amounting to culpable homicide which is murder. The section does not say that it must not amount to that form of culpable homicide which does not amount to murder. It would be quite meaningless if it did, as no man commits a rash or negligent act under conditions such as the exceptions envisage. The whole idea of those exceptions is the reducing of a deliberate act causing death which act apart from those exceptions would be murder, to the offence of voluntary manslaughter. No man deliberately commits a rash or negligent act with the intention of harming anyone. So when this section says "not amounting to culpable homicide", it means not amounting to murder and it does not in my opinion mean not amounting to manslaughter.

If this be the correct interpretation of the section, then the latter must create the offence of manslaughter by negligence. There is no third standard of culpable homicide. It is true that it is regarded as a less serious offence than that of voluntary manslaughter and that the penalties are correspondingly less severe. This only puts in statutory form what is the invariable practice in England *i.e.* the passing of a greatly reduced sentence for manslaughter by negligence than for a manslaughter which is just short of murder.

If manslaughter by negligence is the intended creation of the section, then the test as laid down in *Bateman's* case should undoubtedly apply. It was expressly approved by the House of Lords in the case of the *Director of Public Prosecutions* v. *Andrews* 26 Cr. App. R. p. 34 and it is left open to the court to convict of a less serious offence if it is not satisfied that the negligence has been of the *Bateman* standard.

Any less exacting standard would to my mind create a criminal offence out of a tort and would bring within the provisions of section 304A a person who had contributed towards another's death by mere contributory negligence thereby reducing the law to a farcical state.

For the reasons set out hereinbefore I am of the opinion that the direction given to the assessors by the learned trial judge in the court below was a perfectly correct and proper one.

Solicitors: *Donaldson & Burkinshaw.*